

July 30 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANAIN THE SUPREME COURT OF THE STATE OF MONTANA
NO. DA 09-0322PLAINS GRAINS LIMITED PARTNERSHIP,)
et al.,)

Appellants,)

vs.)

BOARD OF COUNTY COMMISSIONERS OF)
CASCADE COUNTY, the governing body of)
the County of Cascade, acting by and through)
Peggy S. Beltrone, Lance Olson and)
Joe Briggs,)

Appellees.)

and)

SOUTHERN MONTANA ELECTRIC)
GENERATION and TRANSMISSION)
COOPERATIVE, INC., *et al.*,)

Appellees/Cross-Appellants.)

On appeal from the Montana Eighth Judicial District Court

Cause No. BDV-08-480

Honorable E. Wayne Phillips Presiding

MOTION FOR LEAVE TO FILE AFFIDAVIT

APPEARANCES:

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Attorneys for Appellees/Cross- Appellants Southern Montana and Urquharts

Come now Southern Montana Electric Generation and Transmission Cooperative, Inc. and the Urquharts (collectively SME) and request leave from the Court to file the Affidavit of Timothy R. Gregori in support of SME's Petition for Rehearing. The Affidavit of Mr. Gregori attests to the financial investment and construction work undertaken at the site east of Great Falls and bears upon the issues of mootness, the impossibility of returning the parties to the *status quo* and the spot zoning issue.

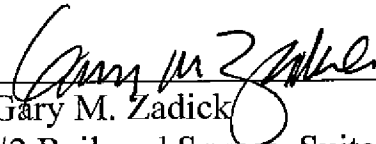
Because the appellants, Plains Grains Limited Partnership, *et. al.*, never moved for a stay of the project, SME never had the opportunity to address, in specific detail, the construction activities and investment, in the millions of dollars, already expended by SME in connection with the project. The Affidavit is also presented to the Court as an "offer of proof" since SME never had the opportunity, through notice and hearing, to create a record due to the failure of the appellants to seek a stay or injunction at any point in this litigation. Finally, the Affidavit is also presented to correct or clarify certain statements in the opinion of the Court.

Counsel for Cascade County has been contacted and does not oppose this Motion. Counsel for Plains Grains, *et. al.*, has been contacted and does oppose this Motion.

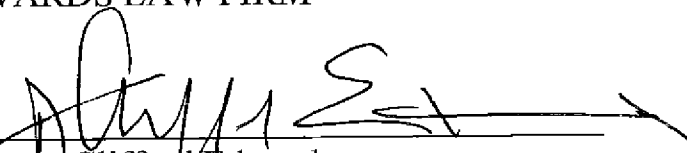
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DATED this 29th day of July, 2010.

UGRIN, ALEXANDER, ZADICK & HIGGINS

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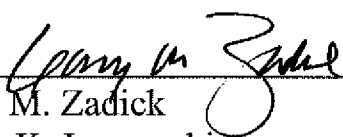
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Southern Montana and Urquharts

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that the foregoing brief is printed with a proportionately spaced Times New Roman test typeface of 14 points, is double spaced, and the word count calculated by Microsoft Word is not more than 1,250 words, excluding Certificate of Service and Certificate of Compliance.

DATED this 29th day of July, 2010.



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Attorneys for Appellees/Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mails at Great Falls, Montana, enclosed in a sealed envelope with first class postage prepaid thereon and addressed as follows:

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DATED this 30th day of July, 2010.



UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

**Affidavit of Timothy R. Gregori in Support of
Southern Montana Electric's Petition for Rehearing**

I, Timothy R. Gregori, state as follows:

1. I am and have been since March, 2004, the General Manager and Chief Executive Officer ("CEO") of Southern Montana Electric Generation and Transmission Cooperative, Inc. ("Southern Montana"). This affidavit is based on my personal knowledge.

2. Southern Montana is a not-for-profit, member-owned electric generation and transmission cooperative corporation providing wholesale electric energy and related transmission services to its six members, five of which are member-owned electric distribution cooperatives: Beartooth Electric, Fergus Electric, Mid-Yellowstone Electric, Tongue River Electric, and Yellowstone Valley Electric; and the sixth of which is Electric City Power, a not-for-profit corporation owned by the City of Great Falls, Montana.

3. Southern Montana's six member systems supply electric energy and related services to approximately 65,000 rural Montanans (including the Northern Cheyenne Tribe and reservation), and some nonresidential customers in Great Falls. Southern Montana in 2009 sold approximately 800,000,000 kilowatt hours of electric energy to its members with a peak demand of about 200 MW; and its revenues from member system sales in 2009 were in excess of \$50,000,000.

4. Southern Montana owns no electric generation capacity and meets the power supply needs of its members by purchasing power from the Bonneville Power Administration ("BPA"), Western Area Power Administration ("WAPA") and PPL Montana.

5. Before March, 2004, BPA announced that it would begin to "recall" Southern Montana's power purchase rights in 2008 and this right would be fully extinguished by September 2011. Before the reductions began in 2008, purchases from BPA represented more than eighty-five percent (85%) of Southern Montana's power supply portfolio.

6. To replace the BPA power purchase right, with the encouragement of the U.S.D.A.'s Rural Utilities Service ("RUS") and in expectation of RUS financing, Southern Montana began a process in 2004 to develop a 250 MW (net) coal-fired generating facility known as the Highwood Generating Station ("HGS")

near Great Falls, Montana. At the time Southern Montana announced its project a typical electric generation facility required approximately four to five years for selection of preferred location, design and engineering, permitting, financing and construction.

7. Southern Montana sought to build the HGS facility near Great Falls on the property of Mary and Duane Urquhart and Scott and Linda Urquhart because of proximity to a cost effective point of interconnection to the regional transmission grid, access to a secure and adequate supply of water (raw and potable), reasonable likelihood of securing an air quality permit from the Montana Department of Environmental Quality (“MDEQ”), transportation facilities, proximity to a skilled workforce and a community that could adequately accommodate the influx of construction workers and eventual permanent staff, and other attributes essential for the construction of a facility of this magnitude. Site preference and suitability were confirmed in a favorable Record of Decision (“ROD”) issued on an Environmental Impact Statement (“EIS”) jointly produced by the MDEQ and RUS.

8. In connection with the proposed HGS project, Southern Montana executed in October 2007 a Federal Energy Regulatory Commission (“FERC”) jurisdictional Large Generation Interconnection Agreement (“LGIA”) with NorthWestern Energy (“NorthWestern”), giving Southern Montana the firm right to interconnect up to 250 MW of non-interruptible generation capacity to NWE’s transmission system near Great Falls. If Southern Montana fails to interconnect HGS prior to October 11, 2011, it drops to the “bottom of the interconnection queue” and loses its rights associated with the October 2007 LGIA.

9. During the rezoning process, Southern Montana applied to the Montana Department of Environmental Quality (“MDEQ”) for an air quality permit for the coal plant, which was issued by MDEQ and became final and non-appealable in November, 2008 as an attribute of the issuance of the Record of Decision on the joint EIS.

10. Southern Montana applied for and received from Cascade County (on October 24, 2008) a Location/Conformance Permit for the construction of a 250 MW coal-fired electric generation plant on the HGS site.

11. In order for Southern Montana to meet the MDEQ requirements for commencement of construction and preservation of its Air Quality Permit, Southern Montana’s contractor mobilized to the HGS site in November 2008, and commenced MDEQ sanctioned construction activities including: site grading;

installation of underground piping; excavation of a large pit for ash disposal; and construction of steel-reinforced concrete foundations for cooling towers and other equipment.

12. In May 2009, Southern Montana secured an investment grade bond rating of “BBB Stable” from Standard and Poor’s, and sought to secure private equity financing for the HGS project.

13. In the face of strong opposition to the construction of a coal-fired facility at HGS, Southern Montana (on about April 24, 2009) submitted an application to MDEQ for an Air Quality Permit for an approximately 120 MW natural gas-fired combined cycle electric generation plant at the HGS site; and on July 31, 2009, Southern Montana formally requested that the MDEQ rescind the valid Air Quality Permit that would have allowed for the construction of a coal-fired facility on the site.

14. With Southern Montana’s request to voluntarily rescind the valid Air Permit for the coal plant in July 2009, plans to construct a coal-fired facility were extinguished and the scope of activities at HGS were reduced (with notice to the public) to only those activities related to a 120 MW natural gas fired (Gas Turbine) facility. Switching to a Gas Turbine facility eliminated the need for a rail supply line to the site and/or condemnation of rail rights-of-way and eliminated the need for a 400 foot plus chimney. The “footprint” of the proposed generating facility shrunk from approximately 650 acres to less than twenty (20) acres, making the footprint similar in size to a farmstead with grain handling facilities. The visual impact of the new facility will be further mitigated by a professionally developed landscape plan that has been approved by Cascade County.

15. The footprint of the natural gas facility will be more than one half mile from the closest boundary of the Lewis and Clark National Historic Landmark (“NHL”). The tallest structure at the facility will only be approximately 100 feet tall and will not be visible from the NHL Staging Area nor will the facility be discernable from Salem Road.

16. Southern Montana has secured an adequate supply of water for the gas facility and made provisions for disposal of wastewater. The large water supply line and substantial wastewater handling facilities necessary for the proposed coal plant are unnecessary for the gas facility. The size of the facility and the number of employees required to operate the gas facility will be less than 25, the threshold for a state regulated potable and wastewater disposal system.

17. On November 1, 2009, the MDEQ issued to Southern Montana, without objection or appeal, an Air Quality Permit for a 120 MW combined cycle natural gas-fired electric generating facility at the HGS site.

18. In reliance on the fact no stay or injunction had been requested or granted following a favorable District Court ruling on rezoning of the Urquhart property in 2008, and subsequent publication of Cascade County Zoning Regulations ("CCZR") approved by the Cascade County Commission on August 25, 2009 (without objection or appeal) designating the HGS site as heavy industrial, Southern Montana proceeded with its efforts to finance, design and construct a Gas Turbine generation facility at HGS.

19. In February, 2010, Southern Montana closed on an \$85,000,000 private placement bond issue for financing the gas facility at HGS; and commenced ordering (with substantial down payments) various essential equipment components for the project, including the gas-fired turbine which is the most critical component of the power production facility. The estimated aggregate cost of the equipment components is more than \$23 million; most critical equipment items have a manufacturing lead time of more than eight months, making ordering of the components early in 2010 essential if they are to be delivered and installed for start-up in mid-2011. Eleven of the fourteen principal equipment items had been ordered on signed contracts (with cancellation penalty provisions) before July 16, 2010.

20. The 668 acre rezoned property was re-surveyed in February, 2010, and divided into two separate tracts. On April 13, 2010, Cascade County issued to Southern Montana an Amended Location/Conformance Permit allowing for the construction of the natural gas fired facility at the HGS site. The Location/Conformance Permit was issued with numerous conditions that Cascade County had imposed in connection with the 2008 rezoning of the Urquhart property. These conditions were imposed in order to address concerns voiced by neighboring landowners and citizens regarding landscaping, adjacent road improvements, noise limitations, exterior painting and appearance, and other considerations. The Amended Location/Conformance Permit was issued without objections or appeals.

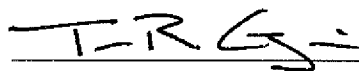
21. Since April 1, 2010, Southern Montana's contractor has installed more than ten of the 19 miles of twelve-inch natural gas piping necessary for an adequate supply of natural gas to the HGS facility. Southern Montana has also acquired substantial additional real property along the Highwood Road about five miles from the HGS site for construction of a switchyard necessary to electrically

interconnect HGS to NorthWestern Energy's 230 KV transmission line running from the Great Falls Switchyard to the Broadview Substation northwest of Billings, Montana. Southern Montana had also by July 16, 2010 executed, and the contractors had begun work on, substantial contracts for fencing, seeding, and other pre-construction activities. Southern Montana had received bids on and negotiated the proposed site civil construction contract. The site civil contractor was also preparing to mobilize to the HGS site when the Court's decision was rendered July 16, 2010.

22. As of June 30, 2010 Southern Montana had spent a total of \$62,503,756.65 on the development of HGS. When adjusted (decreased) for expenditures associated with the development of the coal plant that will not be "used or useful" by the Gas Turbine project, Southern Montana's net investment through June 30 was approximately \$52,403,634.16. Included with this affidavit is an accounting of Southern Montana's expenditures associated with the development of HGS. HGS Expenditures and associated member liabilities increase daily as a function of progress payments contemplated in key equipment contracts. For example, Southern Montana Electric is required to make a monthly progress payment in the amount of approximately \$1,100,000.00 to General Electric for the Gas Turbine Generator.

23. Southern Montana's right to interconnect HGS with the regional electric transmission grid is in jeopardy. Should Southern Montana fail to interconnect HGS prior to October 11, 2011, it drops to the "bottom of the interconnection queue" and loses rights associated with the October 2007 LGIA. The cost associated with being a junior queue position holder at this point of interconnection was recently estimated at being in excess of \$40,000,000.00. Southern Montana has spent approximately \$750,000.00, including approximately \$250,000 since January, 2010, to perfect and protect the October 2007 LGIA.

24. If Southern Montana Electric is denied the ability to proceed with the construction of the HGS gas-fired project, it could be forced into default on the bonds issued to finance the facility, triggering penalties associated with the default provisions contained in the loan documents that could raise the amount to be repaid on demand by the participating member systems to over \$120,000,000.00. Further your affiant sayeth naught.



Timothy R. Gregori


Southern Montana Electric G&T Cooperative, Inc.
Highwood Generating Station
Actual Project Costs thru June 30, 2010

	Total HGS Costs Thru 6-30-10	Coal Related Asset Impairment Write Off	NET
HGS - CAPITALIZED COSTS			
Development Costs:			
Start-up Costs, Permitting, Other Development Work	\$ 9,467,107.88	\$ (3,553,001.79)	\$ 5,914,106.09
Administration & General	9,052,140.07	(208,500.18)	8,843,639.89
Engineering	6,113,521.98	(1,382,218.97)	4,731,303.01
Construction Costs:			
Construction Costs - Site Preparation & Substructure	11,308,583.65	(228,051.55)	11,080,532.10
Construction Costs - Components	19,425,874.55	(4,728,350.00)	14,697,524.55
Land Costs:	2,956,112.70	-	2,956,112.70
Interest Expense:	3,022,003.39	-	3,022,003.39
Total HGS Capitalized Costs	<u>\$ 61,345,344.22</u>	<u>\$ (10,100,122.49)</u>	<u>\$ 51,245,221.73</u>
HGS - OTHER COSTS			
Site Utilities/Maintenance:	4,076.45	-	4,076.45
Rent (Trailers/Temporary Storage on Site)	17,025.00	-	17,025.00
Fire Protection/Emergency Services	98,166.00	-	98,166.00
Insurance	63,361.53	-	63,361.53
Property Taxes	15,781.41	-	15,781.41
Property Purchase (Non-Utility Property) w/property for Substation	960,002.04	-	960,002.04
			-
Total HGS Other Costs:	<u>1,158,412.43</u>	<u>-</u>	<u>1,158,412.43</u>
HGS - TOTAL CASH OUTLAY	<u>\$ 62,503,756.65</u>	<u>\$ (10,100,122.49)</u>	<u>\$ 52,403,634.16</u>

STATE OF MONTANA)
) ss.
COUNTY OF CASCADE)

Subscribed and sworn before me on this 27th day of July in the year 2010, by Timothy R. Gregori, known to me to be the person who executed the within Affidavit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the jurisdiction aforesaid, the day and year first above written.


Notary Public for the State of Montana
Printed Notary Name: GARY M ZADICK
Residing at Great Falls, Montana
My Commission Expires: Sept 10, 2016

